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## THE RECONSTRUCTION OF INTERNATIONAL LAW

ADDRESS BY MANOEL DE OLIVEIRA LIMA

*Former Minister of Brazil to Belgium, Japan, Sweden and Venezuela*

Mr. Chairman and gentlemen of the American Society of International Law: I do not know if I may be allowed to begin this address with a story, or rather, an unimportant personal incident connected anyhow with our subject. Do not suppose that I imagine, as some do abroad, who have but a superficial notion of things American, and, crossing the ocean, have chiefly been guests at banquets, that speeches in this country have to be listened to with pleasure, to be mostly composed of stories. In this sense everybody is, in fact, more or less a story-teller, but we meet with another kind of oratory which is interwoven with principles, and longs for lofty ideals. That is the oratory which, coupled with his own magnetic gifts, rendered, for instance, Daniel Webster famous forever.

What I wish to relate took place in 1915 when I came over as visiting professor to Harvard, and availed myself of the first opportunity to go to a post office in Boston in order to send a small parcel to a friend in Central Europe,—communications from London being of course suspended. The agent told me that I would have to send it at my own risk, as mails by all steamers were subject to search and seizure. As I showed surprise at this assertion and mentioned neutrality—the argument that naturally came to my lips—the good agent, who must have been a law student, or at least the neighborhood of Cambridge had made of him a learned man, answered with a sad smile: “International Law is dead, my dear sir.” I could only reply: “Let us hope that it will revive some day.”

Such a day has fortunately arrived, and it behooves America, for every reason, to take the initiative in such a revival. For every reason, I said, and the chief one is that in peace and war, during the recent historical crisis, America—I am speaking of the whole America—never lost sight entirely of justice and right.

One of the great lessons she derived from the appalling struggle which seems to have caused civilization to forsake Europe forever, is that culture is a vain word when not associated with the cult of law.

We all feel in this hemisphere in the same way, and we are truly Pan-American in this, as in other senses. It is consequently most happy and most appropriate that the reopening of the labors of the American Society of International Law be presided over, as its meetings previously were, by the most distinguished Pan-American of the United States—the Honorable Elihu Root, who left in South America an everlasting recollection for his sincerity of purpose, his diplomatic ability and the broad and deep meaning of his utterances.

His name is connected with all practical recent suggestions for the gathering of peoples under the auspices of law and for the judicial solution of all international controversies. International relations can not prosper without the existence of a supreme ethical rule which every nation must obey and which none may violate without incurring an effective responsibility for her mischief. The construction of world harmony, which is the principal aim of human activity, has therefore to rest upon the codification of the maxims of the law of nations.

Jurists and statesmen have long considered this work indispensable, but violence—and violence is unfortunately more frequently employed than gentleness—has hindered its realization other than in a theoretical form. So far as America is regarded, the task was proposed at the Second Pan-American Conference in Mexico by the Brazilian delegate, Jose Hygino Duarte Pereira—a mind devoted exclusively to the triumph of law—and it received a beginning of execution after the Third Pan-American Conference in Rio de Janeiro, where also the committee of jurisconsults met for this purpose.

My country, as you know, has remained closely bound to the scheme which events have since then made pressing, and I attribute to this circumstance the honor bestowed upon me at this moment, more than to the fact that I represent near the Institute the Brazilian Society of International Law affiliated to it, which has equally resumed its labors under the leadership of an internationalist worthy of all deference, the retired Justice Amaro Cavalcanti, conspicuous in administration, diplomacy and practice of law.

I prize so much more the invitation to speak at this meeting because it has been tendered to me by Dr. James Brown Scott, whom we all consider one of the best workers in this most fruitful field of international conciliation, to which he has devoted his entire intelligent and persuasive activity.

Brazil is not, let me add, the only Ibero-American country to render homage to the ideal of justice as well as to its positiveness, and to be guided in her development by the sentiment of public law. We are, all of us of Spanish or Portuguese descent, the spiritual offspring of Rome; we may sometimes be inclined to a little chicanery and sophistry, but we generally show ourselves in great emergencies ready to sacrifice interests to right, and this is the test of genuine civilization.

We hold for such reason a claim to be amongst the principal artisans of the reconstruction of the crumbled edifice which had been put up at the cost of so many endeavors, so many deceptions, so many hopes and so much ambition. Another will be raised, even of a nobler architecture. We must try to reduce to a minimum the possibilities of war and, if such a calamity has to occur again, to minimize the sufferings of the populations over which fall unduly the burdens and agonies which governments ought carefully to avoid and must be morally compelled to do.

A nobler task can not exist on earth than the one which befalls our soci-

eties. It is said and proven that previous wars and even remote wars were much more merciful than the last World War, deprived, as this one has been, of all spirit of chivalry and most reluctant to admit the efficiency of and to comply with the principles of altruism, or at least of that compassion which everybody believed religion had profoundly impressed on human nature.

We could say formerly that Latin-America possessed a European soul, in the sense that it used to be directed by European thought and that European motives were paramount in its essence, much more so than in this country which had at her disposal greater facilities and enjoyed better conditions to mould her own soul. Recent events have, however, turned that into a fallacy, and the New World is becoming conscious of feeling differently, with more equanimity, more tolerance, more charity, and we may add, more common sense than the old countries from which those new nationalities sprang a century or a little over a century ago.

The American soul is not free from imperfections, but since it tries to be governed by law, it chooses to depend on morality. Utilitarian preoccupations find room, of course, in our collective mind, but they are toned down by intellectual features. We reckon in our communities men like Clovis Bevilacqua, of Brazil, whose life has been a continuous plea for civil rights, and like Zeballos, of the Argentine Republic, who has raised a monument of his own to justice exalted by freedom.

The reopening of the annual meetings of this Society, surely destined to be the best instrument for the reconstruction of international law and the further application of its theories to concrete cases, occurs, through a coincidence, between two commemorations: the unveiling of Bolivar's statue in New York, and the celebration of the first centenary of Napoleon's death.

In these two Homeric figures you may already note the European and the American soul; I mean the difference between the influence under which each of them acts. Napoleon was a military genius and also a genius for social organization; but his materialistic ideal dragged him to ruin, being like any other of the same nature—egotistical and narrow. He wanted his country to be the first, better say, the only one; a new Rome with a much less liberal government of her provinces.

Bolivar, though a warrior, was not a conqueror. He, on the contrary, was a liberator, and his conception was rather of an international character. He looked for the hegemony of Colombia, but a peaceful hegemony exercised through constitutional progress and the action of her prestige on the Pan-American league that he sought to establish at Panama, the geographical importance of which he fully realized as a political precursor and heralded it for the benefit of mankind and the greater glory of America.

Our continent has received from the World War another great lesson which all mankind ought to have learned if passion had not blindfolded a good part of it, the portion precisely that we were accustomed to consider

the representative of best achievements in the realm of intelligence. Such lesson is that war in itself does not solve either national or international problems; it only gives birth to new wars of revenge and retaliation. Europe seems today, after the so-called peace was imposed over there, more divided than during the fighting, which at least preserved an ephemeral solidarity in the fields of battle in face of the diversity and opposition of conflicting interests.

So long as militarism, which is the twin brother of imperialism, remains the foundation of political power, an association of nations deserving such a name can not thrive and be converted into a beneficial reality. That spirit of human fraternity, which is the only one capable of bringing peoples together under the authority of a doctrine common to all civilized nations, is incompatible with contests of nationalities and races. So long as the transgression of such a doctrine, which must stand as a gospel, is blamed by some and condoned by others, and so long as this transgression may be renewed without calling for repression, no positive improvement will be attained in a condition of things singularly unstable.

It would even be difficult, after the present anarchy, to restore the balance which previously existed between a few identical aspirations of groups separated by centuries of hostility and traditions of hatred, without proceeding first to a remodeling of the law of nations and the integral development of institutions known to the classical ages, but only become familiar in modern times.

Have we not in America put an end through arbitration—voluntary, not compulsory—to many troublesome and irritating differences, which threatened the good relations between countries of this hemisphere? If the rule has permitted exceptions, the repetition of these would, I firmly believe, be impossible nowadays. The sword, we may say, has practically ceased to assume the rôle of international arbiter of our destinies.

Brazil has, thanks to that juridical resource, adjusted all her immense boundaries and even entirely abided by an award which was far from impartial and had been dictated by political conveniences, the expression of a national egotism. The Argentine Republic and Chile reached equally through arbitration a friendly agreement on their old territorial quarrels and both countries are so convinced that this agreement is to be everlasting, that they raised the statue of Christ, the Divine Peace-Maker, at the boundary line of the snowy summits of the Andes. Christian feeling inspired their understanding, and will accordingly mould their future relations. European civilization was wrong in neglecting the God of Justice and Mercy to foster the low passions of envy and greed.

In my own country—let me remind you with pride—no war was ever waged for territorial conquest, although once deprived of our natural southern boundary. The long war against Paraguay was called imperialistic, not only imperial, although we were driven into it more than we were willing

to undertake it. Yet Brazil did not extend one inch the previous colonial domain and the payment of the war indemnity was never exacted. That indemnity was stipulated in the treaty celebrated fifty years ago under the form of a certain amount of money—at that time milk cows, for instance, did not figure in peace treaties, which in this way acquire an Assyrian or Babylonian flavor,—but has never been claimed by the victor and is practically canceled. Nobody in Brazil would ever think of insisting on it and not a few ask for its official suppression.

Now that the European league of nations has been discarded by the unmistakable and overwhelming vote of the American people, and that the United States are able through their independent action to assume the moral guidance of the world, in the same way as circumstances have brought within their reach the political, social, financial and economical leadership, it seems as if the occasion has arisen to carry into execution old ideas which belong to the American spiritual patrimony.

The freedom of the seas, for instance, which might well have been the best result, not to say, perhaps, the only good one of the World War, was ignored at the conference of Versailles; yet, historically and politically, it is so intimately associated with the United States' development, that this country went once to war for the sake of it, and later on, if consideration had been accorded to its wishes, the abolition of privateering would have had, as a logical consequence, the respect on the sea of private property other than legitimate contraband of war.

The United States are fortunately in a position today to enforce international equity, and the appeal of such an undertaking cannot fail to exert itself through this western hemisphere. The most important amongst Spanish-American countries has already openly seceded from a league where she looked in vain for superior justice and only met with the negation of a common one. It is not hazardous to say that every one of the other nations of the New World makes American union precede any other attempt at international association, because all of them are sure that our good understanding is the one which is less governed by selfishness. This is a most important item for an effective result of our cooperation towards the reconstruction of international law. We agree on essentials and also agree in purpose, when others disagree nearly on everything. Ours must be the priority and ours must be the capital glory of this pacific conquest.

**PRESIDENT ROOT.** Before we adjourn, the Secretary wishes an announcement made regarding a change of program.

In order to enable President Harding to attend the Fleet maneuvers, the reception at the White House scheduled for Thursday afternoon at 2.30 o'clock, has been postponed until Friday afternoon at 2.30 o'clock. Members desiring to be received by the President will assemble in this room on Friday afternoon at 2.15 and go to the White House in a body.

The program for tomorrow is: Meet at 10 o'clock in the morning at this place. The first proceeding will be an address by Dr. James Brown Scott, Director of the Division of International Law of the Carnegie Endowment for International Peace, on the subject of "The advancement of international law essential to an International Court of Justice."

Topic illustrative of work of first subcommittee, which deals with the need to restate the established rules of international law, especially, and in the first instance, in the fields affected by the recent war. Under that heading the subject matter which I have just read will be discussed by Mr. Lester H. Woolsey, former Solicitor for the Department of State, speaking upon "The munitions trade."

Further discussion under the head of formulating and agreeing upon amendments and additions to the rules of international law, will be a paper on "Conditional contraband," by Mr. Charles Cheney Hyde, Professor of International Law in Northwestern University.

That will be followed by a discussion of the law of "Continuous voyage," by Mr. George Grafton Wilson, Professor of International Law in Harvard University.

There will be a meeting of the Executive Council at No. 2 Jackson Place, at half-past two in the afternoon tomorrow.

In the evening the subject of "International criminal jurisdiction," will be discussed by Professor Jesse S. Reeves, of the University of Michigan.

"The status of international cables in war and peace," will be discussed by Elihu Root, Jr., member of the New York Bar, and a discussion of "The international regulation of aerial navigation," will be led by Mr. Arthur K. Kuhn of the New York Bar.

That concludes the exercises of the evening, and we hope to see all of you frequently during the meetings on the following days. We are very much obliged to you for your attendance and your attention.

(Thereupon, at 9.50 o'clock p. m., an adjournment was taken until 10 o'clock a. m., Thursday, April 28, 1921.)